

## **ARTICLE 17-52**

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## **ARTICLE 17-52**

### **Historic Preservation**

#### **Sec. 17-52-10. Purpose and intent.**

(a) It is the policy and intent of the City Council to protect and enhance the use of cultural resources having historical and architectural significance for the City's cultural, artistic, environmental, social, economic, political, architectural, historic or other heritage. The City Historic Preservation Commission, as established in Article 2-66 of the Municipal Code, shall implement these goals and policies. The historic preservation regulations are necessary for the Historic Preservation Commission to fulfill the purposes for which it was established.

(b) The historic preservation regulations contained in this Article are intended to promote the public health, safety and welfare of the citizens of the City and, at the same time, to provide for the orderly and appropriate preservation, protection, development and redevelopment of cultural resources, including historically significant properties, structures and districts in the City. It is also the intention of the historic preservation regulations to create a reasonable balance between private property rights and the public interest in preserving the City's unique historical character. (Ord 1964, 2008)

#### **Sec. 17-52-20. Definitions.**

All applicable definitions contained in Article 17-12 of this Code, and applicable uniform and international codes adopted by the City Council from time to time, are hereby adopted and made applicable to this Article, provided that the definitions stated herein shall apply except where the context clearly indicates a different meaning.

*Alteration.* Any act or process that changes any of the exterior architectural features of a designated historic landmark or any of the physical features of an historic site or historic district.

*Building.* Any structure which, by illustration, may include a house, barn, agricultural structure, church, public structure or commercial structure.

*Certificate of Appropriateness.* A certificate issued by the Historic Preservation Commission, showing approval of plans for construction, alteration, reconstruction, remodeling, repair, restoration, demolition or relocation of structures that would affect a cultural resource designated as an historic landmark, district or element thereof.

*Certificate of Exemption.* A certificate issued by the Historic Preservation Commission, authorizing the construction, alteration, reconstruction, remodeling, repair, restoration, demolition or relocation of a designated cultural resource or an element within a designated historic district in accordance with the provisions of this Article, even though a Certificate of Appropriateness has previously been denied.

*City Manager.* The City Manager of the City, or anyone designated by the City Manager to administer the duties set forth in this Article.

*Colorado Registers of Historic Properties.* The official listing of state-designated historic sites.

*Compatibility.* Consistent with, harmonious with and/or enhancing the mixture of complementary styles, either of the architecture of an individual cultural resource, historic landmark or the character of a particular historic district.

*Construction.* The erection of on-site improvements on a parcel of land, whether the site is presently improved or unimproved, or the erection of a new principal or accessory structure on such property.

*Contributing structure.* Those cultural resources, structures, landmarks or physical features within an officially designated site or district that contribute to the historical or architectural significance of the cultural resource, historic site or district.

*Cultural resource.* Any individual building, object, monument, structure, site or geographically definable area, such as an historic district that possesses a significant concentration, linkage or continuity of buildings, objects, monuments, structures and sites united by past events, or aesthetically by plan or physical development, that possess distinctive character and special historic, aesthetic, architectural or geographic interest or importance, or reflect the multicultural-multiethnic heritage of the City. All properties listed on the National Register of Historic Places and the Colorado Registers of Historic Properties shall be deemed *cultural resources*.

*Demolition.* Any act or process that destroys, in whole or in part, a cultural resource. The term includes the removal of any material constituting part of the structure other than for purposes of ordinary maintenance or repair, which removal affects the exterior appearance of the structure or which reduces the stability or longevity of the structure.

*Designated historic landmark or historic district* means a cultural resource which is officially included in the City of Brighton Registry of Historic Cultural Resources, National Register of Historic Places and the Colorado Registers of Historic Properties.

*Exceptional historic importance.* Possessing such unusual or uncommon significance that any cultural resource's potential demolition or major alteration would diminish the character and sense of place in the City, or possessing superior or outstanding examples of the architectural, social or geographic historic significance criteria, outlined in the standards and criteria set forth in this Article.

*Exterior appearance.* The character and general composition of the exterior of a cultural resource, including but not limited to the kind, color and texture of the building material and the type, design and character of all windows, doors, light fixtures and appurtenant elements.

*Exterior feature.* The architectural design, style, components and general arrangement of all the outer surfaces of a cultural resource, including but not limited to the color, texture, materials, type and style of all windows, doors, lights, signs and other fixtures appurtenant to said cultural resource.

*Historic district.* Any geographically definable area that has been designated as such by the City Council because of its historic and/or architectural significance and importance to the City. An historic district will include a concentration, linkage or continuity of cultural resources and/or physical features. A district may be related by a pattern of either physical elements or social activities.

*Historic landmark.* Any cultural resource which has been designated as historic and has been included in the City of Brighton Registry of Historic Cultural Resources, the National Register of Historic Places or the Colorado Registers of Historic Properties.

*Historic Preservation Administrator.* The City employee appointed by the City Manager to assist and advise the Historic Preservation Commission and administer duties set forth in this Article.

*Historic Preservation Commission.* The Historic Preservation Commission established in Article 2-66 of the Municipal Code, as it may be amended from time to time, and referred to herein as the *Historic Preservation Commission*.

*Historic property.* Any cultural resources, including buildings, structures, objects, sites or districts, which is officially included in the City of Brighton Registry of Historic Cultural Resources, the National Register of Historic Places and the Colorado Registers of Historic Properties.

*Historic significance.* Having importance in the history, architecture or culture of the City as outlined in the standards and criteria set forth in this Article.

*Improvement.* Any building, structure, place, work of art or other object constituting a physical betterment of real property or any part of such betterment, including improvement on public property.

*Land development application.* Any application, form, accompanying documents, exhibits and fees that are required of an applicant by the applicable City department, board or commission, in order to obtain approval or permitting to establish a use, activity or development and having the effect of permitting development. A land development application shall include, but not be limited to, construction permit, demolition permit, tenant finish permit, home occupation permit, sign permit, business license application, certificate of occupancy, conditional use permit, preliminary plat, final plat, annexation petition, zoning and rezoning, special use and variance (Board of Adjustment), Downtown Plan, Final Development Plan (FDP), Master Plan, Overall Development Plan (ODP), Planned Unit Development Plan (PUD), subdivision plat, site plan review or Use-by-Right (UBR).

*Landmark.* A cultural resource as defined in this Article and designated as such by the City Council by ordinance.

*Monument.* A building, object, structure or site closely linked in remembrance of a person or event.

*National Register of Historic Places.* The national list of districts, sites, buildings, structures and objects significant in American history, architecture, archaeology, engineering or culture maintained by the Secretary of the Interior under authority of Section 101(a)(1)(A) of the National Historic Preservation Act, as amended.

*Nomination.* The process of filing an application for designation as an historic cultural resource. For a district or nonowner application for designation, all paperwork for the application must be completed per the rules promulgated by the Historic Preservation Commission.

*Noncontributing structure.* Any cultural resource, structure or physical feature that may be within a site or district, but does not contribute to the historic significance of the district or site per se.

*Nondesignated structure.* Any structure that has not been designated as an historic landmark.

*Object.* A material item of functional, aesthetic, cultural, historical or scientific value that may be, by nature or design, movable yet related to a specific setting or environment.

*Owner.* The person, corporation or other legal entity, including any public entity, who owns or who has any legal or equitable interest in property and who is so listed as owner in the records of the Assessor's Office of Adams County or Weld County. If title to a cultural resource is held by two (2) or more undivided interest holders, the term *owner* shall refer to all owners of the property and/or their authorized agents.

*Physical features.* The features of a cultural resource that contribute to its historic significance.

*Preservation.* The identification, evaluation, recordation, documentation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance and reconstruction of cultural resources, including the act or process of applying measures to sustain the existing form, integrity and material of a cultural resource.

*Reconstruction.* The act or process of reproducing by new construction the exact form and detail of a vanished cultural resource, or part thereof, as it appeared at a specific time.

*Rehabilitation.* The act or process of returning a cultural resource to a state of utility through repair or alteration which makes possible an efficient contemporary use while preserving those portions or features of the cultural resource which are significant to its historic, architectural and cultural values.

*Relocation.* Moving a cultural resource to a different location, either temporarily or permanently.

*Repair.* The replacement of deteriorated materials which are impractical to save and the repair or reclamation of items worn to the point that they can no longer perform their intended function. Material used for repairs on cultural resources should be as close as possible to the original in composition or materials, in method of fabrication and in manner of erection.

*Repair and maintenance.* Work done on a cultural resource in order to correct any deterioration, decay or damage to any part thereof and in order to restore the same as nearly as practical to its condition prior to such deterioration, decay or damage.

*Restoration.* The act or process of accurately recovering the form and details of a cultural resource and its setting as it appeared at a particular period of time by means of the removal of later work or by replacement of missing earlier work.

*Site.* The location of a significant event, historic occupation or activity or a building or structure, whether standing or vanished, where the location itself maintains historical or architectural value and significance to the community, regardless of the value of any existing building or structure.

*Structure.* A work made up of interdependent and interrelated parts in a definite pattern or organization constructed by man without regard to the size thereof. (Ord 1964, 2008)

#### **Sec. 17-52-30. Eligibility for designation of historic landmark or historic district.**

(a) Historic Landmark Eligibility. A cultural resource may individually be designated as an historic landmark if the cultural resource is at least fifty (50) years old and is of historic and/or architectural significance. If the cultural resource is not at least fifty (50) years old, it must have exceptional historic and/or architectural significance. The finding that a cultural resource possesses historic and/or architectural significance requires that the cultural resource meets at least one (1) of the following categories and satisfies at least one (1) of the criteria for said category. In order to find that a cultural resource has exceptional historic and/or architectural significance, the cultural resource must meet at least two (2) of the following categories:

(1) Architectural category: In order to be considered significant in the architectural category, at least one (1) of the following criteria must be met:

- a. Exemplifies specific distinguishing characteristics of an architectural period or style;
- b. Is an example of the work of an architect or builder who is recognized for expertise nationally, state-wide, regionally or locally;
- c. Demonstrates superior craftsmanship or high artistic value;
- d. Contains elements of architectural design, detail, materials, construction or craftsmanship which represent a significant innovation; or
- e. Evidences a style particularly associated with the Brighton area.

(2) Social and historic category: In order to be considered significant in the social and historic category, at least one (1) of the following criteria must be met:

- a. Is the site of an historic event that had an effect upon society;
- b. Exemplifies cultural, political, economic or social heritage of the community;

- c. Represents a built environment of a group of people in an era of history;
- d. Has significant character, interest or value, as part of the development, heritage or cultural characteristics of the City, State or Nation; or
- e. Has an association with a notable person or the work of a notable person.

(3) Geographic and environmental category: In order to be considered significant in the geographic and environmental category, at least one (1) of the following criteria must be met:

- a. Enhances a sense of identity of the community;
- b. By being part of, or related to, a square, park or other distinctive area which should be developed or preserved according to a plan based on an historic, cultural or architectural motif;
- c. Is unique in its location of singular physical characteristics;
- d. Possesses unique and notable historic, cultural or architectural motifs; or
- e. Is an established and familiar mutual setting or visual feature of the community.

(b) Historic District Eligibility. A definable area within the City may be designated as an historic district upon a finding that the district has a definable area containing a number of individual cultural resources having historic and/or architectural significance that apply to the patterns and unifying elements of that particular district. Historic significance is determined by applying criteria to the patterns and unifying elements found within a district. Nominations for historic district designation by the owners thereof will not be considered unless the application contains written approval of the owners of fifty-one percent (51%) of the individual properties within the boundaries of the proposed district.

(1) The district boundaries shall be defined by visual changes, historic documentation of different associations or patterns of development or evidence of changes in site type, density or other characteristics as established through a survey and inventory.

(2) The individual cultural resources within an historic district shall be evaluated as to the degree of their historic significance. Each cultural resource will be assigned to a historically significant category. The category assigned to a cultural resource will be based on the following evaluations:

a. Noncontributing resource. A resource that does not contribute to the district's overall sense of time, place or historical and/or architectural significance shall be considered a noncontributing resource. Noncontributing resources may be included within the boundaries of an historically significant district; however, their presence must not noticeably detract from the overall district's sense of time, place and historic and/or architectural significance. Noncontributing structures will be evaluated for their magnitude of impact by considering their size, scale, design, location and/or information potential.

b. Contributing resource. A resource that does contribute to the district's overall sense of time, place or historical and/or architectural significance, but does not necessarily meet the

criteria necessary to be officially designated as historically and/or architecturally significant, shall be considered a contributing resource.

c. Historically significant resource. A resource that contributes to the district's overall sense of time, place or historical and/or architectural significance, meets at least one (1) of the categories for historic significance and is at least fifty (50) years old shall be considered an historically and/ or architecturally significant structure. If the resource is not at least fifty (50) years old, it must exhibit exceptional historic significance.

d. Exceptionally significant resource. A resource that is essential to the district's overall sense of time, place or historical and/or architectural significance and meets at least two (2) of the categories for historical significance shall be considered an exceptionally significant resource.

(3) The establishment of an historic district shall be based on a finding of the following:

a. No more than twenty-five percent (25%) of the structures within an historic district may be noncontributing resources.

b. No less than twenty-five percent (25%) of the structures within an historic district must be historically significant and/or exceptionally significant resources.

(4) In order to find that an historic district has exceptional historic and/or architectural significance, no less than fifty percent (50%) of the structures within the historic district must be historically significant and/or exceptionally significant resources.

(c) Inclusion of any cultural resource in the National Register of Historic Places and/or the Colorado Registers of Historic Properties shall be construed as an historic designation under this Article and shall be subject to the same protections as any City historic cultural resource. (Ord 1964, 2008)

#### **Sec. 17-52-40. Nomination for designation of historic landmark or historic district.**

(a) Designation of an historic landmark may be initiated by the City Council, the Historic Preservation Commission, the City Manager or the owners of at least fifty-one percent (51%) of the cultural resource to be designated. Application for designation of an historic district may be initiated by the City Council, the Historic Preservation Commission, the City Manager or application of the owners of at least fifty-one percent (51%) of the individual properties in a proposed historic district.

(b) Review With Owner's Consent. The Historic Preservation Administrator shall make a reasonable effort to secure the owner's consent to such designation before the nomination is accepted as complete for review by the Historic Preservation Commission. If the Historic Preservation Administrator is unable to provide an owner with the notice, as specified above, a written request for consent to designation shall be sent by certified mail, return receipt requested, addressed to the owner of the property as shown on the most recent records. Once consent is obtained, a public hearing shall be scheduled and held by the Historic Preservation Commission for the purpose of determining whether the cultural resource being proposed for designation complies with the guidelines for

designation as an historic landmark or an historic district, the purposes of this Article and the City's Comprehensive Plan.

(c) Review Without Owner's Consent. Once contacted, the owner of an individually nominated cultural resource or a property located in a nominated historic district shall notify the Historic Preservation Administrator, in writing, of any objection to such designation within thirty (30) days from the date of mailing the nomination consent request. The Administrator shall notify the Historic Preservation Commission of all owners' objections received. Failure to provide written objection to the nomination within thirty (30) days of receipt of the nomination consent request shall be considered as the owner's consent to the nomination.

(1) If consent cannot be obtained, the Historic Preservation Administrator shall inform the property owner of the date and time of the Historic Preservation Commission review of the nomination.

(2) If consent to the nomination has not been obtained, the Historic Preservation Commission may review the nomination for designation of an historic landmark or historic district at a public hearing.

(3) In order to refer a nomination for designation of an historic landmark or historic district to the City Council without the consent of the property owner, the Historic Preservation Commission must find that the cultural resource and/or historic district has exceptional historic significance.

(d) Procedures. The procedures for consideration of a nomination for designation of an historic landmark or historic district shall be as follows:

(1) Nominations for historic landmark or historic district designations shall be filed with the Historic Preservation Administrator on forms prescribed by the Historic Preservation Commission and shall include the following items:

- a. The names and addresses of all owners (including owners of undivided interests);
- b. Legal description;
- c. Vicinity map;
- d. Letter of application and justification, including a description of the particular physical features to be preserved; and
- e. Such other data required by the Historic Preservation Commission.

(2) Upon the filing of an application for nomination of historic designation, the Historic Preservation Administrator shall contact the owner of record of the nominated cultural resource or owners of the properties in the proposed historic district, by regular United States mail, postage prepaid, notifying the owner of the nomination. The notice shall include the characteristics of the cultural resource or historic district that justify its designation as an historic landmark or historic district, a description of the particular physical features to be preserved and the effects of designation. Failure to send notice by mail to any such property owner where the address of such

owner is unknown and not a matter of public record shall not invalidate any proceedings in connection with the proposed designation.

(3) The Historic Preservation Administrator shall set the dates for the Historic Preservation Commission public hearing. The nomination shall then be referred to all relevant agencies for review and recommendations at least fifteen (15) days prior to the public hearing.

(4) Notice of the public hearing shall be given and shall include a description of the location of the cultural resource or historic district sufficient to advise the public of the location thereof, the purpose of the hearing, date, time, place and the Historic Preservation Administrator's name, address and phone number. The following notices of the public hearing shall be made at least fifteen (15) days prior to the public hearing:

a. One (1) publication in a newspaper or on a publicly accessible web page;

b. Notice sent by regular mail to each owner, including owners of all real property and cultural resources within a nominated historic district; and

c. A sign or signs, as determined by the Historic Preservation Administrator, shall be posted on the premises nominated for designation.

The requirement to post a sign on the property is not required for public hearings related to the designation of an historic district.

(5) The Historic Preservation Commission shall then conduct a public hearing at the time, date and place as published and shall consider all relevant evidence concerning the proposed designation. Opportunity shall be provided for all interested parties to express their opinions and provide evidence regarding the proposed designation or designations.

a. The Historic Preservation Commission shall hold the public hearing to review a nomination for designation of an historic landmark or historic district within thirty (30) days of the receipt of the nomination and shall make a determination as to the appropriateness of the nomination, according to the standards and criteria adopted in this Article or by the City Council.

b. The Historic Preservation Commission may continue the public hearing for the review of the nomination for no more than two (2) additional thirty-day periods if it finds that further investigation is required prior to issuing a recommendation. The Historic Preservation Commission shall set forth specific findings to justify any such continuance.

c. If the Historic Preservation Commission fails to issue a recommendation regarding the nomination within the time frames set forth herein, the nomination shall be deemed to have been rejected.

(6) If more than one (1) cultural resource is under consideration in the designation procedure, the Historic Preservation Commission may consider each as a separately nominated landmark. In no event may any cultural resource be added to the nomination without instituting a new designation procedure.

(7) Following the close of the public hearing, the Historic Preservation Commission shall, by written resolution, recommend approval, approval with conditions or deny the nomination for historic designation to the City Council.

a. If the nominated cultural resource or district is found to possess historic and/or architectural significance, as determined by the standards and criteria of this Article and rules and regulations adopted by the City Council, the Historic Preservation Commission shall make a recommendation of approval to designate the cultural resource as an historic landmark or historic district to the City Council.

b. If the Historic Preservation Commission makes a recommendation of denial or approval with conditions, the Commission shall set forth by resolution the findings of fact that constitute the basis for its decision.

(e) City Council Review. The procedures for consideration of a nomination for designation of an historic landmark or historic district by City Council shall be as follows:

(1) Following action by the Historic Preservation Commission, the Historic Preservation Administrator shall submit a report to the City Council which shall include that portion of the Historic Preservation Commission's survey and inventory related to the nominated cultural resource, a summary of the historic significance of the nominated cultural resource, the recommendations of the Historic Preservation Commission as set forth in the Historic Preservation Commission's resolution and such further information as may be requested by the City Council.

(2) The City Manager shall set the date for the City Council public hearing at the next available City Council regular meeting agenda.

(3) The City Council shall then conduct a public hearing, pursuant to published and mailed notice as required above, and consider all relevant evidence concerning the proposed nomination.

(4) The City Council may approve, approve with conditions or deny the nomination.

a. Approval or approval with conditions by the City Council shall be by ordinance.

b. Denial may be by motion or resolution, as the City Council deems appropriate.

(5) The Historic Preservation Administrator shall record, in the office of the applicable County Clerk and Recorder, a certified copy of the ordinance designating the specified cultural resource as an historic landmark or historic district, and include therewith a listing of the individual cultural resources and properties included therein.

(6) The Historic Preservation Administrator shall send to the owner of each property a copy of the ordinance and a letter which contains an explanation of the owner's obligations and restrictions created by such a designation and specifically advising the owner of the owner's responsibility to apply for a Certificate of Appropriateness (COA) prior to construction, reconstruction, remodeling, alteration, repair, restoration, rehabilitation, relocation or demolition of improvements on such cultural resource or property. (Ord 1964, 2008; Ord. 2123 §13, 2011)

**Sec. 17-52-50. Certificates of appropriateness.**

(a) Prior to submitting a land development application or receiving a permit for construction, reconstruction, remodeling, alteration, repair, restoration, rehabilitation, relocation or demolition of improvements on such cultural resource, property or other exterior physical feature on a designated historic cultural resource, historic landmark or within an historic district, the applicant shall obtain a COA from the Historic Preservation Commission for the proposed work.

(b) The procedures for consideration of an application for a COA shall be as follows:

(1) The applicant shall submit to the Historic Preservation Administrator an application for a COA. The application for a COA shall include information that the Historic Preservation Administrator determines as necessary to consider the application and shall include the following items:

- a. The names and addresses of all owners (including owners of undivided interests);
- b. Legal description;
- c. Vicinity map;
- d. Letter of application and justification;
- e. Site development plan;
- f. Landscape plan;
- g. Architectural elevations, including specifications of the textures, materials, colors, architectural details and design; and
- h. Such other data required by the Historic Preservation Commission.

(2) The Historic Preservation Administrator shall set the dates for the Historic Preservation Commission public hearing. The application shall then be referred to all relevant agencies for review and recommendations at least fifteen (15) days prior to the public hearing.

(3) The Historic Preservation Commission shall then conduct a public hearing and consider all relevant evidence concerning the proposed COA application. Opportunity shall be provided for all interested parties to express their opinions and provide evidence regarding the proposed application.

a. The Historic Preservation Commission shall hold the public hearing to review an application for a COA within thirty (30) days of the receipt of the application and shall make a determination as to the appropriateness of the proposed work, according to the standards and criteria adopted in this Article or by the City Council.

b. The Historic Preservation Commission may continue the public hearing for the review of the COA for no more than two (2) additional thirty-day periods if it finds that further investigation is required to explore acceptable solutions to the COA application prior to

rendering a decision. The Commission shall set forth specific findings to justify any such continuance.

c. If the Historic Preservation Commission fails to issue a decision regarding the COA application within the time frames set forth herein, the application shall be deemed to have been rejected.

(4) The Historic Preservation Commission shall issue a COA if it finds that the proposed construction, reconstruction, remodeling, alteration, repair, restoration, rehabilitation, relocation or demolition of improvements will not detrimentally alter, destroy or adversely affect any architectural or site feature that contributes to the historic and/or architectural significance of the cultural resource, historic landmark or historic district. The Historic Preservation Commission should find that the proposed work is visually compatible with existing historic cultural resources.

a. Certificate of Appropriateness (COA) criteria. In determining appropriateness of the proposed work, the Historic Preservation Commission shall review the application using the following criteria:

1. The effect upon the general historic and/or architectural character of the cultural resource, historic landmark and/or the historic district;
2. The architectural style, arrangement, texture and material used on the existing and proposed cultural resources and their relation to and compatibility with one another;
3. The size of the cultural resource, the setbacks, location and the appropriateness thereof, when compared to the existing cultural resource and site;
4. The compatibility of accessory structures and fences with the existing structure; and
5. The effects of the proposed work in creating, changing, destroying or otherwise impacting the exterior architectural features of the structure upon which such work is proposed;
6. The condition of existing improvements and whether they are a hazard to public health and safety;
7. The effects of the proposed work upon the protection, preservation, enhancement, perpetuation and the use of the cultural resource, historic landmark and/or historic district;
8. Compliance with the United States Secretary of the Interior's Standards for Rehabilitation and Guidelines of Rehabilitating Historic Buildings, a section of the Secretary of the Interior's Standards for Historic Preservation Projects, of the Department of the Interior Regulations (36 C.F.R. Part 67, Historic Preservation Certifications), as may be amended from time to time; and
9. Such rules and guidelines as may be recommended by the Historic Preservation Commission and approved by the City Council for construction, reconstruction, remodeling,

alteration, repair, restoration, rehabilitation, relocation or demolition of improvements of a cultural resource, historic landmark and/or historic district.

(5) Following the close of the public hearing, the Historic Preservation Commission shall, by written resolution, approve, approve with conditions or deny the application for a COA.

a. If the proposed work is found to adequately comply with the standards and criteria of this Article and rules and regulations adopted by the City Council, the Historic Preservation Commission shall issue a COA to the applicant, which shall be required prior to any construction, reconstruction, remodeling, alteration, repair, restoration, rehabilitation, relocation or demolition of improvements on such cultural resource, historic landmark or historic district.

b. If the Historic Preservation Commission denies the application for a COA, the Commission shall set forth, by resolution, the findings of fact that constitute the basis for its decision.

(c) All work performed on the cultural resource, designated historic landmark or an element within a designated historic district shall conform to the conditions, restrictions and limitations set forth in the COA.

(d) Appeals. The applicant may appeal a decision of the Historic Preservation Commission to the City Council.

(1) The notice of appeal shall be filed with the Historic Preservation Administrator within thirty (30) days of the date of the decision.

(2) The City Manager shall set the appeal on the next available City Council regular meeting agenda. At such time, the applicant may present evidence relevant to the application and the grounds for the appeal.

(3) Following the hearing, the City Council may uphold the decision of the Historic Preservation Commission, approve the application, approve the application with conditions or deny the application.

(e) Relocating Historically Designated Structure. Prior to receiving a permit to relocate or move any historically designated cultural resource or any designated cultural resource within or into an historic district, the applicant shall obtain a COA from the Historic Preservation Commission for the proposed work.

(1) Relocation and moving criteria. In addition to the COA criteria set forth above, the Historic Preservation Commission shall use the following criteria in considering an application for a COA for relocating a cultural resource, including an historic landmark, a contributing structure in an historically designated district, a cultural resource onto an historic site or a cultural resource onto a property in an historic district:

a. Original site criteria. The following criteria shall be used when determining the appropriateness of relocating a cultural resource from its original site:

1. Documentation demonstrating that the cultural resource cannot be rehabilitated or reused on its original site to provide for any reasonable beneficial use of the property;

2. The contribution the cultural resource makes to its present setting;

3. If the cultural resource can be moved and relocated without significant damage to its integrity and the applicant can demonstrate that relocation is a viable alternative to preserve the character and integrity of the cultural resource; and

4. Whether a structural report submitted by a licensed structural engineer adequately demonstrates the soundness of the cultural resource proposed for relocation.

b. Receiving site criteria. The following criteria shall be used when determining the appropriateness of relocating a cultural resource to a new proposed site:

1. Whether the cultural resource is compatible with its proposed new location and if the receiving site is compatible with the cultural resource to be moved;

2. The cultural resource's architectural integrity and its consistency with the character of the neighborhood; and

3. Whether the relocation would diminish the integrity or character of the receiving neighborhood.

(f) Demolition of Historically Designated Cultural Resource. Prior to receiving a permit to demolish any designated cultural resource or any cultural resource within an historic district, the applicant shall obtain a COA from the Historic Preservation Commission for the proposed work.

(1) Demolition criteria. In addition to the COA criteria, set forth in this Subsection, the Historic Preservation Commission shall use the following criteria in considering an application for a COA for demolition of a cultural resource or a contributing structure in an historically designated district:

a. Total demolition criteria. The following criteria shall be used when determining the appropriateness of total demolition of a cultural resource:

1. Whether the cultural resource proposed for demolition is not structurally sound despite evidence of the owner's efforts to properly maintain the structure;

2. Whether the cultural resource cannot be rehabilitated or reused on the site to provide for any reasonable beneficial use of the property;

3. Whether the cultural resource cannot be practically moved to another site in the community; and

4. Whether the applicant can demonstrate that the proposal mitigates, to the greatest extent possible, the following:

a) Any impacts that occur to the visual character of the neighborhood where the demolition is proposed to occur;

b) Any impact on the historic importance of other cultural resources located on the property and adjacent properties; and

c) Any impact to the architectural integrity of other cultural resources located on the property and adjacent properties.

b. Partial demolition criteria. The following criteria shall be used when determining the appropriateness of partial demolition of a cultural resource or a contributing structure:

1. Whether the partial demolition is required for the renovation, restoration or rehabilitation of the cultural resource; and

2. Whether the applicant has mitigated, to the greatest extent possible, the following:

a) Impacts to the historic importance of the cultural resource or other cultural resources on the property; and

b) Impacts to the architectural integrity of the cultural resource or other cultural resources on the property.

(g) Exemptions. If a COA has been denied or the application for a COA does not conform to the applicable criteria, an applicant may request demolition pursuant to a Certificate of Exemption from the denial and/or requirements, provided that the intent and purpose of this Article are not significantly compromised, and provided that adequate documentation is submitted to the Historic Preservation Commission, either in writing or by testimony, to establish qualification for one (1) of the exemptions as set forth below:

(1) Economic hardship exemption. An economic hardship exemption may be granted if:

a. For investment or income-producing properties, the owner is unable to obtain a reasonable return on investment in the cultural resource's present condition or in a rehabilitated condition;

b. For non-income-producing properties, the owner is unable to resell the property in its current condition or if rehabilitated; or

c. The economic hardship claimed is not self-imposed.

(2) Health/safety hardship exemption. An applicant requesting an exemption based on health/safety hardship must show that the application of the criteria creates a situation substantially inadequate to meet the applicant's needs because of specific health and/or safety issues.

(3) Inability to use. Three (3) years after denial of a demolition permit approval, if no feasible use or ownership is found for the structure, the owner may request a waiver of all or a part of the restraint of demolition.

(4) The applicant must provide adequate documentation and/or testimony to establish, to the satisfaction of the Historic Preservation Commission, qualification for one (1) of the listed exemptions:

a. The data provided by the applicant must be substantiated by either professionals in an applicable field or by thorough documentation of how the information was obtained.

b. The Historic Preservation Commission may request additional information from the applicant as necessary to make informed decisions.

(5) The Historic Preservation Commission shall include the following factors in its consideration of the request:

a. Documented evidence of applications and written correspondence, including written consultations, illustrating efforts made by the property owner to comply with this Article and/or make the necessary repairs;

b. Efforts of the applicant to find an appropriate user or to find a purchaser for the property; and

c. The adequacy of the applicant's efforts to locate available assistance for complying with this Article and/or making the property functional without demolition.

(6) The Historic Preservation Commission shall review all the evidence and information required of the applicant for a Certificate of Exemption and approve, approve with conditions or deny the same. Failure of the Historic Preservation Commission to act within sixty (60) calendar days after the date a completed application for exemption is received, unless an extension is agreed upon in writing by the applicant, shall be deemed to constitute approval, and a Certificate of Exemption shall be issued.

(7) The applicant may appeal the Historic Preservation Commission's approval with conditions or denial of an application for a Certificate of Exemption to the City Council. The notice of appeal shall be filed with the Historic Preservation Administrator within thirty (30) days of the Historic Preservation Commission's decision. The City Manager shall set the appeal on the next available regular meeting agenda. At the City Council meeting, the applicant and the Historic Preservation Commission may present evidence relevant to the application, the decision of the Historic Preservation Commission and the basis of the appeal. Following the hearing, the City Council may uphold the decision of the Historic Preservation Commission, approve the application, approve the application with conditions or deny the application.

(8) All work performed on the designated landmark or on an element within a designated historic district shall conform to the conditions, restrictions and limitations set forth in the Certificate of Exemption. (Ord 1964, 2008)

#### **Sec. 17-52-55. Demolition and moving permit review.**

(a) Purpose. The purpose of this Section is to prevent the loss or destruction of structures that are fifty (50) years of age or older that may have historical or architectural significance, but which

have not been designated historic landmarks that are subject to the provisions of Section 17-52-50 above, and to provide the time necessary to initiate landmark designation or consider other alternatives for the preservation of such structures.

(b) Application Review. Prior to approval of any land development application that may require the demolition or relocation of a structure that is fifty (50) years or older which has not been designated as an historic structure or is not located in an historic district, the Community Development Department shall refer such application to the Historic Preservation Administrator or the City Manager, for review. Prior to issuing a permit for the demolition or moving, in whole or in part, for any structure that is fifty (50) years or older which has not been designated as an historic structure, the Chief Building Official shall refer the demolition or moving permit application to the Historic Preservation Administrator or the City Manager, to be reviewed. The application shall be stayed for ten (10) business days, pending review. The Historic Preservation Administrator or the City Manager, shall review the application and inspect the nondesignated structure to prevent the potential demolition or removal of structures that may be of significance to the historic resources of the City or which may be eligible for designation as an historic landmark as provided in Section 17-52-30 above.

(c) Initial Determination. The application for land development approval or demolition/ moving permit shall be reviewed and the structure proposed for demolition or moving inspected by the Historic Preservation Administrator or the City Manager, in order to make an initial determination of whether there exists a reasonable belief that the subject property may be of significance to the historic resources of the City or eligible for designation as an historic landmark. An initial determination shall be made within ten (10) business days of the permit or application submittal. The subject property may be reviewed against the Historic Properties Priority Matrix and/or the Historic Properties Watch List and may be inspected in the field to make the initial determination.

(1) If the structure is not identified on the Historic Properties Priority Matrix or the Historic Properties Watch List, and the Historic Preservation Administrator or the City Manager, determines that the property does not possess historic significance and there is no reasonable basis to believe that the structure may be eligible for designation as an historic landmark; and the loss thereof will not have a significant impact on the historic resources of the City, the land development application may proceed or the demolition or relocation permit may be issued by the Chief Building Official, provided that all other requirements for the application or permit are satisfied.

(2) The Historic Preservation Administrator or the City Manager, shall refer the application for land development approval or demolition/moving permit to the Demolition Review Sub-Committee if the structure is identified on the Historic Properties Priority Matrix or the Historic Properties Watch List, or if the Historic Preservation Administrator or the City Manager, determines by written notice to the owner with a copy thereof to the Demolition Review Sub-Committee that there is a reasonable belief that the structure may possess historic or architectural significance, the loss of the structure may have a significant impact on the historic resources of the City, and the structure may be eligible for designation as an historic structure. Approval of the application and/or issuance of the permit shall be stayed for thirty (30) business days from the date of the initial determination unless the owner of the subject property agrees to more time.

(d) Demolition Review Meeting. Upon a finding that there exists a reasonable belief that the subject property possesses historic significance or may be eligible for designation as an historic structure, the Historic Preservation Administrator or the City Manager, shall contact the applicant and the owner of the subject property, by regular United States mail, in order to notify the owner of the initial determination and the thirty-day stay, and in order to schedule a meeting with the Demolition Review Sub-Committee.

(1) If the owner of the subject property is unable to attend the demolition review meeting within thirty (30) business days of the initial determination, the meeting may be postponed to a later date as agreed to by the owner of the subject property.

(2) Should the owner of the subject property be unable to attend a demolition review meeting and does not agree to additional time, waives the right to attend the meeting in writing or is unable to be contacted, the Demolition Review Sub-Committee shall schedule a meeting within thirty (30) business days of the initial determination.

(3) The Demolition Review Sub-Committee shall then meet with or without the owner, in order to consider all relevant evidence concerning the historical significance of the structure, the proposed demolition or moving of the structure and any alternatives to demolition or relocation. Opportunity shall be provided for the property owners to express their opinions and provide evidence regarding the historical significance of the structure and the proposed demolition or moving of the structure.

(4) Alternatives. During the demolition review meeting and the stay of the application or demolition or moving permit, the Demolition Review Sub-Committee may seek alternatives to demolition or moving of the structure, which may include but not be limited to:

a. Soliciting cooperation from the owner to find solutions or alternatives to demolition or moving;

b. Consult with the Historic Preservation Commission, civic groups, public or private agencies, interested citizens, the City, the City Council or any other interested parties, in order to find alternative solutions to demolition or moving of the structure;

c. Recommend and/or facilitate acquisition of the property by another interested party;

d. Explore the potential for moving the structure to another location;

e. Explore the potential for salvaging historically significant features of the property; and

f. Seek any other acceptable alternative to prevent demolition or removal of the structure.

(5) If the Demolition Review Sub-Committee finds that further investigation and negotiations are required in order to explore acceptable solutions to the proposed demolition or removal of the structure prior to rendering a final decision, the Sub-Committee may continue the demolition review meeting for no more than thirty (30) business days from the initial meeting date, unless additional times or meetings are agreed upon by the owner of the subject property.

(6) If the Demolition Review Sub-Committee determines that the structure has no historic or architectural significance, the demolition or removal of the structure would have no significant impact on the historic resources of the City and there is no reasonable basis to believe that the structure may be eligible for designation as a landmark, the land development application may proceed or the Chief Building Official shall issue the permit, if all other requirements of the application or permit process have been met.

(7) If the Sub-Committee determines that there is a reasonable basis to believe that the structure has historic or architectural significance, that the loss of the structure would have a significant impact on the historic resources of the City and there is reasonable basis to believe that the structure may be eligible for designation as an historic structure, the application or permit may be postponed for a period not to exceed sixty (60) days from the date of the final Demolition Review Sub-Committee Meeting. The Sub-Committee shall provide the Historic Preservation Commission and the property owner with a written notice of the determination that the structure may have historical or architectural significance and of the additional sixty-day postponement.

(e) Demolition/Moving Permit Postponement. The Historic Preservation Commission may take any action that it deems necessary, during the sixty-day postponement, in order to research and document the significant features of the property or to preserve the structure.

(1) During the sixty-day postponement, the Historic Preservation Commission may conduct a Cultural Resource Survey of the property, as described in the *Colorado Cultural Resources Survey Manual: Guidelines for Identification: History and Archaeology*, for the purpose of researching and documenting the property.

(2) During the sixty-day postponement, the Historic Preservation Commission may take action to preserve the structure, including initiating consideration of the structure as an historic landmark in accordance with Section 17-52-40 above and the issuance of a Certificate of Appropriateness pursuant to Section 17-52-50.

a. If the property has been nominated for historic designation during the sixty-day postponement of the application or permit, the postponement of the permit shall be continued during the consideration of historic designation, application for a Certificate of Appropriateness or application for a Certificate of Exemption.

b. If the property has not been nominated for historic designation or the Historic Preservation Commission and owner have entered into an agreement for the preservation of the structure during the sixty-day postponement of the application or permit, the application or permit shall be considered approved and the application may move forward or the permit issued by the Chief Building Official, provided that all other requirements for the application or permit are met. (Ord. 2060 §2, 2010)

#### **Sec. 17-52-60. Administration and enforcement.**

(a) Interim Control. No building permit, relocation permit or demolition permit shall be issued by the Building Division for construction, reconstruction, remodeling, alteration, repair, restoration, rehabilitation, relocation or demolition of a cultural resource under consideration of historic designation as a landmark or within an historic district, from the date of receipt of a nomination for

designation, until a final decision related to the designation by the City Council is determined, or unless such construction, reconstruction, remodeling, alteration, repair, restoration, rehabilitation, relocation or demolition is authorized by resolution of the City Council as necessary for public health, welfare or safety. In no event shall the delay in issuance of a building permit due to the provisions of this Section be for more than ninety (90) days.

(b) Cultural Resource Survey. If any cultural resource fifty (50) years or older exists on a property at the time that a land use development application is submitted, the City Council, the Historic Preservation Commission or the City Manager may require the owner or applicant of the property to submit a Cultural Resource Survey, as described in the Colorado Cultural Resource Survey Manual: Guidelines for Identification: History and Archaeology, prior to processing the land use application. The cost of conducting the cultural resource survey may be solely borne by the applicant of the land development application.

(c) Register of Locally Designated Historic Landmarks or Districts. The Historic Preservation Administrator shall maintain a current record of all pending designations and a registry of designated cultural resources, landmarks and districts.

(d) Amendment or Revocation of Designation. An historic landmark or historic district designation may be amended or rescinded in the same manner as the original designation was made. The ordinance therefor shall be recorded in the office of the applicable County Clerk and Recorder.

(e) Application of Standards. All standards, rules and regulations adopted by the City Council by resolution or ordinance, the Colorado Cultural Resource Survey Manual: Guidelines for Identification: History and Archaeology and the Standards for Rehabilitation and Guidelines of Rehabilitating Historic Buildings, a section of the Secretary of the Interior's Standards for Historic Preservation Projects, of the Department of the Interior Regulations (36 C.F.R. Part 67, Historic Preservation Certifications), as may be amended from time to time, shall be the technical documents utilized by the Historic Preservation Commission for the evaluation of all materials, construction types and all other relevant issues relating to the construction, reconstruction, remodeling, alteration, repair, restoration, rehabilitation, relocation or demolition to cultural resources. These standards shall be on file and available for inspection by the public in the Community Development Department. The standards, rules and regulations are to be applied to all work in a reasonable manner, taking into consideration economic and technical feasibility.

(f) Property Maintenance Required. The deliberate or inadvertent neglect of a cultural resource, including neglect to interior portions of those structures for which maintenance is necessary to prevent exterior deterioration, is prohibited and shall be considered by the City a violation of this Article. No owner, lessee, occupant or person in possession of a cultural resource shall act in a way as to cause deterioration, or act in a way as to fail to prevent the deterioration, of any cultural resource, historic landmark or any physical features of said cultural resource or historic landmark.

(g) Maintenance and Repair. Nothing in this Article shall be construed to prohibit the accomplishment of any work on any cultural resource, landmark or historic district which will change neither the exterior appearance (including color and materials), nor the exterior architectural features of improvements or structures, nor the character or appearance of the land itself, and which is considered necessary as a part of normal maintenance and repair.

(h) Remedying of Dangerous Conditions. In any case where the Building Inspector, the Greater Brighton Fire Protection District or any other public authority having the power, orders or directs the construction, reconstruction, alteration, repair, relocation or demolition of a cultural resource for the purpose of remedying conditions determined by that officer, department or authority to be imminently dangerous to life, health or property. Nothing contained herein shall be construed as making it unlawful for any person to comply with such order. Any such officer, department or authority shall take immediate steps to notify the Historic Preservation Administrator and the Historic Preservation Commission of the proposed issuance of any such order or directive.

(i) Extension of Time Limits. Any time limit set forth in this Article may be extended by mutual consent of the Historic Preservation Commission or City Council, whichever is applicable, and the applicant.

(j) Violations and Penalties.

(1) As it relates to the terms of this Article, it shall be unlawful for any person to do or perform, or cause to be done or performed:

a. Any act or thing prohibited by the provisions thereof;

b. Any act or thing prohibited by any lawful orders or regulations issued pursuant to any of the provisions thereof; or

c. Any act or thing omitted or not performed that is required to be done by this Article, or any lawful regulation or order issued under the provisions thereof.

(2) If any person, including but not limited to the officers and agents of a corporation responsible for its actions or inaction and the partners, or members of a partnership, firm or joint venture, shall violate or cause the violation of any provision of this Article, they and each of them shall be guilty of a separate offense for each and every day or portion thereof during which a violation is committed, permitted or continues. Upon conviction thereof, any person, including but not limited to such officers, agents, partners, or members, shall be subject to the penalties provided for in Article 17-8 of this Code.

(3) If any person violates any provision or fails to comply with any of the requirements of this Article, the City may seek a preliminary or permanent injunction in a court of competent jurisdiction restraining the person from continuing the violation, activities which would create further violations or compelling abatement or remediation of the violation.

(4) The remedies above are not exclusive of any other remedies available under any applicable federal, state or local law, and it is within the discretion of the City to seek alternative and/or cumulative remedies.

(k) Severability.

(1) If any provision of this Article is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that provision which is expressly stated in the decision to be invalid.

Such decision shall not affect, impair or nullify this Article as a whole or any other part, but the rest of the Article shall continue in full force and effect.

(2) If the application of any provision of this Article to any cultural resource, lot, building or other structure or a tract of land is declared to be invalid by a decision of any court of competent jurisdiction, it is hereby declared to be the legislative intent that the effect of such decision shall be limited to that cultural resource, lot, building or other structure or tract of land immediately involved in the controversy, action or proceeding in which the judgment or decree of invalidity was rendered. Such decision shall not affect, impair or nullify this Article as a whole or the application of any provision to any other cultural resource, lot, building or other structure or tract of land. (Ord 1964, 2008)